

December 17, 2021

At the December meeting of the Zoning Bylaw Working Group, it was recommended that I write out my proposed changes to the Zoning Bylaw. I am proposing changes in six areas:

- Section 3.2.3 Rules and Regulations: Reduce citation to minimum required
- Definitions: Clarify what area to include in calculation of Half Story
- Definitions: Add definition for Building Wall; replace all instances of "Foundation Wall" with "Building Wall" throughout bylaw
- Section 5.3.9 Projections into Minimum Yards: add Porches to consideration
- Section 5.4.2 Dimensional and Density Requirements: Clarify determination of what qualifies as a Large Addition
- Section 8.1.5 Unsafe Structure: clarify who is qualified to make the determination

I have provided some commentary to accompany each recommended change. Please let me know if you have any questions.

Sincerely,

Christian Klein
ZBWG Member, ZBA

- Rules and Regulations: I recommend reducing this section to the essential portion with the elimination of subsection A in its entirety. The text includes an unenforceable provision to require oaths and many other requirements which are included in state law or in the ZBA Rules and Regulations.

3.2.3 Rules and Regulations

The Board of Appeals shall adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk. The Board's regulations shall include rules for hiring outside consultants.

A. The Chair of the Board of Appeals, or in their absence the Acting Chair, may administer oaths, but must do so for hearings involving G.L. c. 40B, summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals and all permit and special permit granting authorities shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in G.L. c. 40A §§ 9 and 15. The Board of Appeals shall cause to be made a detailed record of its proceedings which in the case of G.L. c. 40B hearings shall require that all testimony be electronically recorded, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions, copies of all of which shall be filed within 14 days in the office of the Town Clerk and the office of the Arlington Redevelopment Board and shall be a public record, and notice of decisions shall be mailed immediately to the petitioner and to the owners of all property deemed by the Board of Appeals to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to every person present at the hearing who requests that notice be sent to them and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board of Appeals shall issue to the land owner a notice, certified by the chair or clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds.

The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.

The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Bylaw, or to effect any variance in the application of this Bylaw.

- Definition of Half Story: I recommend the addition of the indicated text to clarify what building area is included in the calculation of the half story. Areas outside the building wall will no longer count.

Story, Half: A story which is under a gable, hipped, gambrel roof, or other sloped roof with a minimum slope of 2:12, where less than one half the floor area within the building walls, measured from the underside of the roof framing to the finished floor below, has a clear height of 7 feet 0 inches or more.

- Building Wall¹: There has been a lot of confusion regarding the term “foundation wall” which is undefined in the bylaw, but it is used in four places. There have been several attempts over the years to provide a definition, but they have been unsuccessful in addressing the core issue. At the same time, the term “building wall” is undefined and used 16 times in the bylaw. I am proposing to provide a definition for “Building Wall” and change the four references to “Foundation Wall” to “Building Wall”. I believe this will resolve both of these issues.

Building Wall: For the purposes of this Bylaw, the Building Wall shall be the exterior wall of the predominant portion of a building excluding decks, porches, steps, stairs, landings, eaves, chimneys, bay windows, balconies, fire escapes, enclosed entrances, and other similar attached features.

The following are the changes required to replace “foundation wall” with “building wall”.

Building Line, Front: A line drawn parallel to the front boundary of a lot along the front ~~foundation building~~ wall of a building or through the point on a building closest to the front boundary.

5.3.9 Projections into Minimum Yards

- A. Projecting eaves, chimneys, bay windows, balconies, open fire escapes, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the ~~foundation building~~ wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit. Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the ~~foundation building~~ wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks, and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.

5.4.2.B (6) Large Additions. No alteration or addition which increases the gross floor area of a building by 750 square feet or more, or by 50% or more of the building's gross floor area on the date of application for a permit or because of cumulative alterations or additions during the previous two years, shall be allowed unless:

- The addition is constructed entirely within the existing ~~foundation building walls~~,

1: “Building Wall” appears in the bylaw 16 times. “Foundation Wall” appears in the bylaw 4 times. Neither term is defined. I am proposing to combine them into a single term, as defined above. I have included all 20 occurrences below.

- Setback: The shortest horizontal distance from the front lot line to the nearest **building wall** or building part not specifically excluded in Section 5.
- Pan Channel Letter: A specific type of sign letter consisting of a metal pan enclosure fabricated in the shape of a letter. The metal pan enclosure is used to house the lighting and electrical components of the letter and can be mounted directly to a **building wall**. The sign face is usually made out of colored plastic and is attached to the metal pan to seal it off from pests and harsh weather.
- Plate line: The uppermost horizontal line of a **building wall** upon which the roof rests.
- Sign, Building Identification: A permanent sign consisting of letters applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.
- Sign, Individual Letter: A cut-out or etched letter or logo which is individually mounted on a **building wall**, or freestanding sign.
- Yard: An open space unobstructed from the ground up, on the same lot with a principal building, extending along a lot line or front lot line and inward to the principal building. The size of a required yard shall be measured as the shortest distance between the line of the **building wall** (or building part not specifically excluded under this Bylaw) and a lot line. Structures that are below the finished lot grade shall not be deemed to occupy required yards.
- Yard, Front: A yard extending for the full width of the lot between the front line of the nearest **building wall** and the front lot line.
- Yard, Rear: A yard, unoccupied except by an accessory structure or accessory use as herein permitted, extending for the full width of the lot between the rear line of the nearest **building wall** and the rear lot line.
- Yard, Side: A yard unoccupied, except by an accessory structure or use as herein permitted, between the line of the **building wall** and a side lot line extending from the front yard to the rear yard. In the case of a lot having no street frontage or a lot of odd shape, any yard that is not a front yard or a rear yard shall be considered a side yard.
- 5.3.9.C: Second story additions within the required front yard setback may extend no more than one foot beyond the existing **building wall**.
- 5.4.2.B(4): Front Yard Minimum Lot Width Requirements and Exceptions. The minimum front yard lot width shall be 50 feet at all points between the front lot line and the nearest **building wall**, except that such minimum front yard lot width shall not apply to (i) any lot excepted under Section 5.4.2(B)(1) or 5.4.2(B)(2) or (ii) restoration of any principal building that existed on a lot or for which a building permit was issued prior to February 1, 1988.
- 6.2.4.C(2) Internally Illuminated Signs. Internally illuminated signs include signs constructed with pan channel letters, preferably without raceways, or internal/indirect halo illuminated channel letters on an unlit or otherwise indistinguishable background on a freestanding sign or **building wall**.
- 6.2.5.D(1) Awning Signs: Must not project above, below, or beyond the edges of the face of the **building wall** or architectural element on which it is located.
- 6.2.5.D(6) Marquee Sign: Must not project above, below, or beyond the edges of the face of the **building wall** or architectural element on which it is located.
- 6.2.5.D(10) Wall Sign: Painted wall signs are allowed on any exterior **building wall** of an individual tenant space or building.
- 6.2.6.C Temporary Signs: Wall Banner: Signs must be mounted on a **building wall** or on T-posts or stakes installed 6 inches or less from the wall.
- Building Line, Front: A line drawn parallel to the front boundary of a lot along the front **foundation wall** of a building or through the point on a building closest to the front boundary.
- 5.3.9.A: Projecting eaves, chimneys, bay windows, balconies, open fire escapes, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the **foundation wall** may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit.
- 5.3.9.B: Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the **foundation wall** may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks,

and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.

- 8.1.3.A: Alteration, reconstruction, extension, or structural change to a single or two-family residential structure that is completely within the existing [foundation walls](#) does not increase the nonconforming nature of said structure.

- Projections into Minimum Yards: The Board has had many cases requesting a special permit to construct a “farmer’s porch” or other large unenclosed porch at the front of a residence. The Board routinely approves these projections into the front yard with the condition that the added portion of the building will not count towards the establishment of the foundation wall in a position closer to the street. We note the “Porch” is not included in this section, and I am seeking to add it. I am also recommending that the first paragraph be split, as there are two separate provisions regarding projections.

5.3.9 Projections into Minimum Yards

- Projecting eaves, chimneys, bay windows, balconies, open fire escapes, porches, and enclosed entrances not more than 25 square feet in floor area or more than one story high which do not project more than three and one-half feet beyond the line of the foundation wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Enclosed Porches and enclosed entrances larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit.
- Unenclosed steps, decks, and the like, which do not project more than 10 feet in the front yard, or more than five feet in the side yard beyond the line of the foundation wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. Unenclosed steps, decks, and the like which do not project more than 10 feet into the required rear yard and are not closer to the lot line than half the size of the required yard, may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built.
- Second story additions within the required front yard setback may extend no more than one foot beyond the existing building wall.

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- Dimensional and Density Requirements: The determination of whether a proposed addition is a “large addition” can be made using two different requirements. There is some confusion whether it is the less or more restrictive requirement which applies. I am proposing to indicate that the more restrictive applies. In addition, Inspectional Services has interpreted this section to allow deducting the area of an alteration or addition that falls within the foundation wall from the area considered for the determination of a large addition. I think this is contrary to the bylaw, and the proposed language is intended to get at that concern.

5.4.2 Dimensional and Density Requirements

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Residential districts. Additional dimensional and density regulations affecting all districts can be found in Section 5.3.

B. Exceptions to Minimum Lot Area, Minimum Front Yard Lot Width, Frontage, Open Space, Side Yard, and Height Requirements in the R0, R1, and R2 Districts.

(6) Large Additions. No alteration or addition which increases the gross floor area of a building by 750 square feet or more, or by 50% or more of the building's gross floor area on the date of application for a permit, whichever is smaller, regardless of location, or because of cumulative alterations or additions during the previous two years, shall be allowed unless:

- The addition is constructed entirely within the existing foundation walls, or
- The Board of Appeals, acting pursuant to Section 3.3, finds that the alteration or addition is in harmony with other structures and uses in the vicinity.

In making its determination, the Board of Appeals shall consider, among other relevant facts, the proposed alteration or addition's dimensions and setbacks in relation to abutting structures and uses.

- **Unsafe Structure:** This change is to establish who may make a determination of whether a structure is unsafe. There have been cases where a contractor has removed a portion of a building after determining on their own that the structure was unsafe. This allows that portion of the structure to be rebuilt, when it would not ordinarily be allowed. I am proposing that the determination be made either by a licensed structural engineer or the Director of Inspectional Services to be certain that the proper determination is being made.

8.1.5 Unsafe Structure

Except as covered under Section 8.1.7, any structure determined to be unsafe by a licensed structural engineer or the Director of Inspectional Services may be restored to a safe condition, provided such work on any nonconforming structure shall be completed within one year of the determination that the structure is unsafe, and it shall not place the structure in greater nonconformity. A structure may be exempted from this provision by a special permit granted by the Board of Appeals or, in cases subject to Environmental Design Review, Section 3.4., the Arlington Redevelopment Board.